

ASSEMBLY BILL

No. 2755

Introduced by Assembly Member Bonnie Lowenthal

February 19, 2010

An act to amend Sections 130051.9, 130051.11, 130232, and 130242 of, to amend and renumber Section 130051.21 of, and to repeal Section 130243 of, the Public Utilities Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2755, as introduced, Bonnie Lowenthal. Los Angeles County Metropolitan Transportation Authority: contracting.

The County Transportation Commissions Act creates county transportation commissions or authorities in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, with specified powers and duties. Existing law, with respect to those agencies, generally requires purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure exceeds \$25,000, to be by contract let to the lowest responsible bidder. Existing law contains various alternative provisions applicable solely to the Los Angeles County Metropolitan Transportation Authority.

This bill would enact additional provisions applicable to the Los Angeles County Metropolitan Transportation Authority. It would require a contract to be let to the lowest responsible bidder when the purchase price of the contraction of all facility exceeds \$100,000, rather than \$25,000. The bill would authorize the authority to award individual contracts not exceeding \$8,000,000 per year, providing for the issuance of job orders for construction work with compensation for the work based on unit prices, and would define "job order" and "unit price" for these purposes. The bill would authorize a contractor of the authority

to enter into subcontracts with subcontractors that were not listed in the bid for the job order contract, as specified.

Existing law requires the chief executive officer of the authority to approve and award all contracts for construction, which approval shall be based on the lowest responsible and responsive bid submitted.

This bill would authorize the chief executive officer to delegate this authority as necessary for the administrative efficiency of the authority.

Existing law authorizes the authority to enter into design-build contracts with private entities under which a single contract incorporates some or all of the planning, design, permitting, development, joint development, construction, construction management, acquisition, leasing, installation, and warranty of all or components of transit systems and facilities on real property owned or to be owned by the authority, subject to certain requirements.

This bill would make various modifications to the requirements for design-build contracts. The bill would authorize the authority to delegate the preparation of supporting documents and findings, and award of contracts, under these provisions to an organizational unit of the authority.

Existing law requires the inspector general of the authority to prepare a prequalification questionnaire to be completed by each construction company, engineering firm, consultant, legal firm, product vendor, or other business entity seeking to contract with the authority.

This bill would instead require the questionnaire to be prepared by the authority with respect to business entities seeking to perform a public works project in excess of \$5,000,000, and would only require the inspector general to review the questionnaire to ensure it solicits specified information. The bill would authorize the authority to prequalify prospective contractors and limit consideration of bids or proposals to prequalified contractors.

Existing law requires the authority to adopt a specified change order procedure for contracts awarded by the authority.

This bill would repeal these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 130051.9 of the Public Utilities Code is
2 amended to read:

1 130051.9. (a) The Los Angeles County Metropolitan
2 Transportation Authority shall appoint a full-time chief executive
3 officer who shall act for the authority under its direction and
4 perform those duties delegated by the authority.

5 (b) The chief executive officer shall be appointed to a term of
6 four years and shall be removed from office only upon the
7 occurrence of one or both of the following:

8 (1) A two-thirds majority of the members of the authority votes
9 for removal.

10 (2) The chief executive officer violates a federal or state law,
11 regulation, local ordinance, or policy or practice of the authority,
12 relative to ethical practices, including, but not limited to, the
13 acceptance of gifts or contributions.

14 (c) The chief executive officer shall approve and award all
15 contracts for construction, and that approval shall be based upon
16 the lowest responsible and responsive bid submitted. *The chief*
17 *executive officer may delegate this authority as necessary for the*
18 *administrative efficiency of the authority.*

19 (d) The Los Angeles County Metropolitan Transportation
20 Authority shall appoint a general counsel and board secretary.

21 SEC. 2. Section 130051.11 of the Public Utilities Code is
22 amended to read:

23 130051.11. (a) The Los Angeles County Metropolitan
24 Transportation Authority may determine its organizational
25 structure, which may include, but is not limited to, the
26 establishment of departments, divisions, subsidiary units, or similar
27 entities. Any department, division, subsidiary unit, or similar entity
28 established by the authority shall be referred to in this chapter as
29 an “organizational unit.” The authority shall, at a minimum,
30 establish the following organizational units:

31 (1) A transit construction organizational unit to assume the
32 construction responsibilities for all exclusive public mass transit
33 guideway construction projects in Los Angeles County.

34 (2) An operating organizational unit with the following
35 responsibilities:

36 (A) The operating responsibilities of the former Southern
37 California Rapid Transit District on all exclusive public mass
38 transit guideway projects in the County of Los Angeles.

1 (B) The operation of bus routes operated by the former Southern
2 California Rapid Transit District, and all the duties, obligations,
3 and liabilities of the district relating to those bus routes.

4 (3) A transportation planning and programming organizational
5 unit with all planning responsibilities previously performed by the
6 former Southern California Rapid Transit District and the former
7 Los Angeles County Transportation Commission.

8 (b) Nothing in this section shall be construed to require specific
9 bus routes to be operated. The authority or the operating
10 organizational unit may make any adjustment with respect to bus
11 routes, bus services, or both, which is within the power of the
12 former Los Angeles County Transportation Commission, or the
13 former Southern California Rapid Transit District.

14 (c) Any obligations of the former Southern California Rapid
15 Transit District arising out of a collective bargaining agreement
16 entered into by the district shall be the exclusive obligations of the
17 Los Angeles County Metropolitan Transportation Authority. It is
18 the intent of the Legislature that the rights or obligations under
19 any collective bargaining agreement in existence on January 1,
20 1993, not be enlarged or diminished by this section or any other
21 provision of the act which added this section.

22 (d) No collective bargaining agreement entered into by the
23 former Southern California Rapid Transit District on or after
24 January 1, 1993, shall be effective unless approved by the Los
25 Angeles County Metropolitan Transportation Authority. The
26 authority's approval of an agreement shall cause the agreement to
27 be binding upon the authority.

28 (e) ~~On and after April 1, 1993, any~~ Any reference to the former
29 Southern California Rapid Transit District in Article 10
30 (commencing with Section 30750) of Chapter 5 of Part 3 of
31 Division 10 is deemed to refer to the Los Angeles County
32 Metropolitan Transportation Authority.

33 (f) The Los Angeles County Metropolitan Transportation
34 Authority may administratively delegate to an organizational unit
35 or to its chief executive officer any powers and duties it deems
36 appropriate. Powers and duties ~~which~~ *that* may be delegated to an
37 organizational unit include, but are not limited to, the following:

38 (1) The power of eminent domain.

39 (2) Approval of contracts, except the final approval of labor
40 contracts.

1 (3) Hearing and resolving bid protests.

2 (4) Preparation of supporting documents and findings, and
3 approval of contracts, under Sections 130233, 130234, 130236,
4 ~~and 130237, and 130242~~ within guidelines adopted by the board
5 of directors.

6 (g) The Los Angeles County Metropolitan Transportation
7 Authority shall establish a citizens' advisory council pursuant to
8 subdivision (d) of Section 130105.

9 SEC. 3. Section 130051.21 of the Public Utilities Code, as
10 added by Chapter 10 of the Statutes of 1996, is amended and
11 renumbered to read:

12 ~~130051.21.~~

13 *130051.22.* (a) The Los Angeles County Metropolitan
14 Transportation Authority shall ~~require its inspector general to~~
15 prepare a prequalification questionnaire to be completed by each
16 construction company, engineering firm, consultant, legal firm,
17 product vendor, and any other business entity seeking to contract
18 with the authority ~~for the furnishing of goods or services to perform~~
19 *a public works project in excess of five million dollars*
20 *(\$5,000,000). The authority shall require its inspector general to*
21 *review the questionnaire shall to ensure it solicits*, at a minimum,
22 ~~solicit~~ information on all of the following subjects regarding the
23 firm:

24 (1) Experience.

25 (2) Quality and timeliness of past performance.

26 (3) Reliability and responsibility.

27 (4) Compliance with equal employment requirements.

28 (5) Compliance with wage, hours, and other fair labor standards.

29 (6) Subcontractors used by the firm.

30 (7) Integrity of the firm and its key personnel.

31 (8) Gifts given, or contributions made, to members or alternate
32 members or employees of the authority.

33 (b) Neither the authority nor any of its organizational units shall
34 contract or do business with any responding firm that knowingly
35 provides false information in the questionnaire.

36 (c) *Nothing in this section is intended to restrict the authority*
37 *from requiring a similar questionnaire to be completed by any*
38 *other construction company, engineering firm, consultant, legal*
39 *firm, product vendor, or any other business entity seeking to*
40 *contract with the authority.*

1 (d) *The authority may prequalify prospective contractors for*
2 *particular types of supplies, services, insurance, or construction,*
3 *and may limit consideration of bids or proposals to prequalified*
4 *contractors.*

5 SEC. 4. Section 130232 of the Public Utilities Code is amended
6 to read:

7 130232. (a) Except as provided in subdivision (f), purchase
8 of all supplies, equipment, and materials, and the construction of
9 all facilities and works, when the expenditure required exceeds
10 twenty-five thousand dollars (\$25,000), shall be by contract let to
11 the lowest responsible bidder. Notice requesting bids shall be
12 published at least once in a newspaper of general circulation. The
13 publication shall be made at least 10 days before the date for the
14 receipt of the bids. The commission, at its discretion, may reject
15 any and all bids and readvertise.

16 (b) Except as provided for in subdivision (f), whenever the
17 expected expenditure required exceeds one thousand dollars
18 (\$1,000), but not twenty-five thousand dollars (\$25,000), the
19 commission shall obtain a minimum of three quotations, either
20 written or oral, that permit prices and terms to be compared.

21 (c) Where the expenditure required by the bid price is less than
22 fifty thousand dollars (\$50,000), the executive director may act
23 for the commission.

24 (d) All bids for construction work submitted pursuant to this
25 section shall be presented under sealed cover and shall be
26 accompanied by one of the following forms of bidder's security:

- 27 (1) Cash.
28 (2) A cashier's check made payable to the commission.
29 (3) A certified check made payable to the commission.
30 (4) A bidder's bond executed by an admitted surety insurer,
31 made payable to the commission.

32 (e) Upon an award to the lowest bidder, the security of an
33 unsuccessful bidder shall be returned in a reasonable period of
34 time, but in no event shall that security be held by the commission
35 beyond 60 days from the date that the award was made.

36 (f) The following provisions apply only to the Los Angeles
37 County Metropolitan Transportation Authority:

- 38 (1) The contract shall be let to the lowest responsible bidder or,
39 in the authority's discretion, to the responsible bidder who
40 submitted a proposal that provides the best value to the commission

on the basis of the factors identified in the solicitation when the purchase price of all supplies, equipment, and materials exceeds one hundred thousand dollars (\$100,000). “Best value” means the overall combination of quality, price, and other elements of a proposal that, when considered together, provide the greatest overall benefit in response to requirements described in the solicitation documents. The contract shall be let to the lowest responsible bidder when the purchase price of the construction of all facilities exceeds ~~twenty-five~~ *one hundred* thousand dollars ~~(\$25,000)~~ *(\$100,000)*.

(2) The authority shall obtain a minimum of three quotations, either written or oral, that permit prices and terms to be compared whenever the expected expenditure required exceeds three thousand dollars (\$3,000), but not one hundred thousand dollars (\$100,000).

(3) The authority may purchase supplies, equipment, and materials from a public auction sale, including public auctions held via the Internet, using the procedures established for all other participants in the public auction.

(4) The authority may participate in a procurement agreement involving other public entities that is identified by a procuring public entity or entities as a cooperative procuring agreement from which other public entities may make purchases or enter into contracts, and the authority may procure, and enter into contracts for, items purchased pursuant to that procurement agreement, notwithstanding that the authority may not be the procuring public entity, provided the procurement agreement is awarded or entered into by either of the following:

(A) One or more public entities or an organization of public entities, which may include the authority.

(B) A federal, state, or local public entity.

(5) (A) *Notwithstanding any other provision of this article, the authority may award individual contracts, none of which shall exceed eight million dollars (\$8,000,000) per year, providing for the issuance of job orders for construction work with compensation for the work based on unit prices. No contract awarded under this paragraph may provide for the issuance of any single job order that would exceed one million dollars (\$1,000,000). The maximum amounts set forth in this paragraph shall be adjusted annually to reflect the percentage change in the California Consumer Price Index. The maximum term of a contract issued pursuant to this*

1 *paragraph shall not exceed one year, plus four option terms of*
2 *one year each. The contracts shall be awarded to the lowest*
3 *responsive and responsible bidder. The lowest bid shall be based*
4 *upon the bidder's percentage adjustment to the unit prices for*
5 *units of work listed and described either in (i) a book of unit prices*
6 *for units of work that is an industry standard and is incorporated*
7 *in the authority's invitation for bid, or (ii) a schedule of unit prices*
8 *for units of work contained in the authority's invitation for bid.*

9 *(B) Notwithstanding Chapter 4 (commencing with Section 4100)*
10 *of Part 1 of Division 2 of the Public Contract Code, subject to the*
11 *approval of the authority, a contractor may enter into subcontracts*
12 *with subcontractors that were not listed in the bid for the job order*
13 *contract, but are listed in the contractor's proposal for a job order*
14 *under the contract.*

15 *(C) For purposes of this paragraph:*

16 *(i) "Job order" means an order issued by the authority to a*
17 *contractor to perform construction work under a contract awarded*
18 *under this paragraph.*

19 *(ii) "Unit price" means the amount paid for a single unit of an*
20 *item of work.*

21 SEC. 5. Section 130242 of the Public Utilities Code is amended
22 to read:

23 130242. (a) In addition to the other powers it possesses, *and*
24 *notwithstanding any other provision of law*, the authority may
25 enter into contracts with private entities, the scope of which may
26 combine within a single contract all or some of the planning,
27 design, permitting, development, joint development, construction,
28 construction management, acquisition, leasing, installation, and
29 warranty of all or components of (1) transit systems, including,
30 without limitation, passenger loading or intermodal station
31 facilities, and (2) facilities on real property owned or to be owned
32 by the authority.

33 (b) The authority may award contracts pursuant to subdivision
34 (a) after a finding, by a two-thirds vote of the members of the
35 authority, that awarding the contract under this section will achieve
36 for the authority, among other things, certain private sector
37 efficiencies in the integration of design, project work, and
38 components.

39 (c) A contract awarded pursuant to this section may include
40 operation and maintenance elements, if the inclusion of those

1 elements (1) is necessary, in the reasonable judgment of the
2 authority, to assess vendor representations and warranties,
3 performance guarantees, or life cycle efficiencies, and (2) does
4 not conflict with collective bargaining agreements to which the
5 authority is a party.

6 (d) Any construction, alteration, demolition, repairs or other
7 works of improvement performed under a contract awarded
8 pursuant to this section shall be considered a public works project
9 subject to Chapter 1 (commencing with Section 1720) of Part 7 of
10 Division 2 of the Labor Code, and shall be enforced by the
11 Department of Industrial Relations in the same way it carries out
12 this responsibility under the Labor Code.

13 (e) A contract under this section shall be let to the lowest
14 responsible bidder whose bid is responsive to the criteria set forth
15 in the invitation for ~~bids~~ *bid, or, in the authority's discretion, to*
16 *a contractor chosen by a competitive bidding process that employs*
17 *selection criteria in addition to cost. Any design work performed*
18 *pursuant to this section shall be prepared and signed by an*
19 *architect certificated pursuant to Chapter 3 (commencing with*
20 *Section 5500) of Division 3 of the Business and Professions Code.*
21 Notice requesting bids shall be published at least once in a
22 newspaper of general circulation. The publication shall be made
23 at least 60 days before the receipt of the bids. The authority, at its
24 discretion, may reject any and all bids, and may readvertise. All
25 bids *and price proposals* submitted pursuant to this section shall
26 be presented under sealed cover and shall be accompanied by one
27 of the following forms of bidder security: (1) cash, (2) a cashier's
28 check made payable to the authority, (3) a certified check made
29 payable to the authority, or (4) a bidder's bond executed by an
30 admitted surety insurer, made payable to the authority. Upon an
31 award ~~to the lowest responsible bidder~~, the security of each
32 unsuccessful bidder shall be returned in a reasonable period of
33 time, but in no event shall that security be held by the authority
34 beyond 60 days from the time the award is made.

35 (f) *When the design of portions of the project permits the*
36 *selection of subcontractors, the contractor shall competitively bid*
37 *those portions. The contractor shall provide to the authority a list*
38 *of subcontractors whose work is in excess of one-half of 1 percent*
39 *of the total project cost as soon as the subcontractors are identified.*
40 *Once listed, the subcontractors shall have the rights provided in*

1 *the Subletting and Subcontracting Fair Practices Act (Chapter 4*
2 *(commencing with Section 4100) of Part 1 of Division 2 of the*
3 *Public Contract Code).*

4 SEC. 6. Section 130243 of the Public Utilities Code is repealed.
5 130243. ~~The Los Angeles County Metropolitan Transportation~~
6 ~~Authority shall adopt a change order procedure for contracts~~
7 ~~awarded by the authority that includes each of the following~~
8 ~~requirements:~~

9 ~~(a) When a change order is proposed, the contract administrator~~
10 ~~of the authority shall be notified and shall determine whether a~~
11 ~~change order is required. After consulting with the general counsel~~
12 ~~of the authority and appropriate technical advisers, the contract~~
13 ~~administrator shall either approve or disapprove the proposed~~
14 ~~contract change order.~~

15 ~~(b) The general counsel of the authority shall be consulted on~~
16 ~~the proposed change order at the earliest possible time to consider~~
17 ~~and render advice on the legal implications of the proposed change.~~
18 ~~The contract administrator shall not approve a proposed change~~
19 ~~order unless the general counsel recommends changing the terms~~
20 ~~of the contract.~~

21 ~~(c) The contract administrator shall require the contractor to~~
22 ~~submit certified cost and pricing data for the proposed change, and~~
23 ~~shall require an internal fiscal audit of any proposed change order~~
24 ~~when cost and pricing data would be required under federal~~
25 ~~acquisition regulations contained in Subpart 15.4 of Part 15 of~~
26 ~~Subchapter C of Chapter 1 of Title 48 of the Code of Federal~~
27 ~~Regulations.~~

28 ~~(d) The opinions of informed individuals working on the contract~~
29 ~~who oppose the adoption of a proposed change order shall be~~
30 ~~documented and be taken into consideration by the authority's~~
31 ~~change control board when determining whether a contract change~~
32 ~~is warranted.~~